TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 120.

CHARLES ZARTARIAN, APPELLANT,

vs.

GEORGE B. BILLINGS, UNITED STATES COMMISSIONER OF IMMIGRATION AT THE PORT OF BOSTON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

FILED SEPTEMBER 29, 1905.

(19,914.)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 25, 1906.

1 *Transcript of Record of Circuit Court.*

UNITED STATES OF AMERICA, *District of Massachusetts:*

At the Circuit Court of the United States for the First Circuit, begun and holden at Boston, within and for the District of Massachusetts, on the last Tuesday of February, being the twenty eighth day of February, in the year of our Lord one thousand nine hundred and five before the Honorable William L. Putnam, Circuit Judge.

No. 1562, Law Docket.

Charles Zartarian, Petitioner for Writ of Habeas Corpus.

The Petition for a Writ of *Habeas Corpus* in this cause is filed in the clerk's office on the twenty first day of April, A. D. 1905, and is in the words and figures following:

2 *Petition.*

(Filed April 21, 1905.)

UNITED STATES OF AMERICA:

Circuit Court of the United States, District of Massachusetts.

In the Matter of the Petition of CHARLES ZARTARIAN, in Behalf of MARIAM ZARTARIAN, for a Writ of *Habeas Corpus* and a Writ of Certiorari.

To the Honorable Francis C. Lowell, Judge of the Circuit Court of the United States within and for the District of Massachusetts:

Respectfully represents your petitioner, Charles Zartarian, of Boston, in the County of Suffolk and Commonwealth of Massachusetts, that he was born in Harput, Asiatic Turkey, that he became a naturalized citizen of the United States on September 12th, 1896, at the Circuit Court of Cook County, in the State of Illinois, that the certificate of naturalization then issued to him is hereto annexed (marked "A"), that in the latter part of the year 1904, the Turkish Government, at the request of the United States Minister at Constantinople, granted permission to the wife of your petitioner, to his son, and to his daughter, Mariam Zartarian, fifteen years of age, to emigrate to the United States, that on March 22nd, 1905, the Honorable G. V. L. Meyer, then United States Ambassador at Rome, Italy, issued to your petitioner's wife and to his minor daughter, the said Mariam, the passport which is annexed hereto (marked "B"), that said Mariam arrived at the port of Boston from Naples, Italy, on the steamship Romanic of the White Star line, on
3 April 18th, 1905, that on April 19th, 1905, a board of special inquiry appointed by George B. Billings, United States Com-

missioner of Immigration at the port of Boston, under color of authority of an act of Congress of March 3rd, 1903, relative to the immigration of aliens into the United States, voted, one member of said board dissenting, to debar said Mariam from entering the United States on the ground that she had a dangerous contagious disease, to wit, trachoma, a disease of the mucous covering of the eyelids.

Your petitioner says that his said daughter, Mariam Zartarian, is unlawfully imprisoned, detained, confined and restrained of her liberty at said Boston by said George B. Billings, and that she is now in the custody of said George B. Billings.

Your petitioner says that said imprisonment, detention, confinement and restraint are contrary to the Constitution and laws of the United States, and especially contrary to Article V. of the Amendments to the Constitution of the United States, and to Section 2172 of the Revised Statutes of the United States, in that said Mariam is to be considered a citizen of the United States by virtue of the citizenship of your petitioner, and in that said imprisonment, detention and restraint of liberty are without due process of law.

Wherefore your petitioner prays for a writ of *habeas corpus* to said George B. Billings, and also for a writ of certiorari to bring up the record of the board of special inquiry which voted to debar said Mariam Zartarian from entering the United States.

CHARLES ZARTARIAN.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*

BOSTON, *April 21st,* 1905.

Then personally appeared the above named Charles Zartarian and made oath that the facts set forth herein are true to the best of his knowledge and belief, before me,

[SEAL.] JOHN W. RORKE,
Notary Public.

"A."

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, *County of Cook, ss:*

Be it remembered, That on the twelfth day of September, in the year of our Lord one thousand eight hundred and ninety six in the Circuit Court of Cook County, in the State of Illinois, (the same being a Court of Record, having a Clerk and Seal), and of the August term thereof, for the year aforesaid, Charles Zartarian, an alien, came into Court and applied to be admitted as a Naturalized Citizen of the United States, and it having appeared to the satisfaction of the Court that the said applicant has resided within the limits and under the jurisdiction of the United States for and during

the full term of five years last past, and one year and upward immediately preceding the date hereof, in the State of Illinois, and that during said term of five years he has sustained a good moral character, and appeared to be attached to the principles contained in the Constitution of the United States, and well disposed to the good
5 order, well being and happiness of the same; and two years and upward having elapsed since the said applicant filed the declaration of his intention to become a citizen of the United States, according to the provisions of the several acts of Congress heretofore passed on that subject; and he having now here, in open Court, taken and subscribed the oath required by those laws to support the Constitution of the United States, and to renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state or sovereignty whatever, and more particularly all allegiance which he may in anywise owe to the Sultan of Turkey, of whom he was heretofore a subject.

It was therefore ordered and adjudged by the Court, that the said Charles Zartarian be and he was thereby admitted to all and singular the rights, privileges and immunities of a Naturalized Citizen of the United States, and that it be certified to him accordingly, which is done by these presents.

Witness, Frank J. Gaulter, Clerk of said Circuit Court of Cook County, and the Seal thereof, at Chicago, in said Cook County, this twelfth day of September, A. D. 1895.

[SEAL.] FRANK J. GAULTER, *Clerk.*

6 "B."

Good only for two years from date.

Embassy of the United States of America at Rome, Italy.

To all to whom these presents shall come, Greeting:

I, the undersigned, Ambassador Extraordinary and Plenipotentiary of the United States of America, hereby request all whom it may concern to permit Halmas Zartarian a citizen of the United States, accompanied by one minor child: Mariam safely and freely to pass, and in case of need to give them all lawful Aid and Protection.

Description:
Age 35 Years
Stature 5 Feet 1½ inches Eng.
Forehead low
Eyes brown
Nose medium
Mouth medium
Chin round
Hair dark brown
Complexion dark
Face round.
Signature of the Bearer: Illiterate.

[SEAL.] Given under my hand and the Seal of the Embassy of the United States at Rome, Italy, the 22 day of March in the year 1905, and of the Independence of the United States the one hundred and twenty ninth.

G. V. L. MEYER.

No. 3825.

7 Upon the filing of said petition, a summons to show cause why said petition should not be granted is issued, returnable on the twenty second day of April, A. D. 1905, at ten o'clock, A. M. On the same day, the following Agreed Facts *is* filed:

Agreed Facts.

(Filed April 21, 1905.)

The following are agreed upon as the facts in this case:

The petitioner, Charles Zartarian, formerly a subject of the Sultan of Turkey, became a naturalized citizen of the United States on September 12, 1896, at the Circuit Court of Cook County, in the State of Illinois. That his daughter Mariam, on whose behalf this petition is brought, is a girl between fifteen and sixteen years of age, and was born just prior to the petitioner's leaving Turkey. That in the latter part of the year 1904, the Turkish Government, at the request of the United States Minister at Constantinople, granted permission to the petitioner's wife, minor son and his said daughter Mariam, to emigrate to the United States, it being stipulated in the passport issued to them that they could never return to Turkey. That on March 22nd, 1905, the Hon. G. V. L. Meyer, then United States Ambassador at Rome, Italy, issued a United States passport to your petitioner's said wife and daughter. That said Mariam arrived at Boston from Naples, Italy, on April 18th, 1905, and that on April 18th, 1905, she was found to have trachoma, and was debarred from landing by a board of special inquiry appointed
8 by the United States Commissioner of Immigration for the port of Boston.

DANIEL B. RUGGLES,
Attorney for Petitioner.
WILLIAM H. GARLAND,
Ass't U. S. Attorney for Respondent.

This cause is thereupon, to wit, April 27, 1905, submitted on the pleadings and briefs of the respective parties to the Honorable Francis C. Lowell, Circuit Judge, and on the twenty eighth day of April, A. D. 1905, the decision of the Court is announced, denying petition and the following Decree is entered:

Decree.

April 28, 1905.

LOWELL, *J.:*

On the twenty eighth day of April, A. D. 1905, this cause comes on to be heard and is fully heard by the Court, the Honorable Francis C. Lowell, Circuit Judge, sitting, and it is thereupon ordered, adjudged and decreed that the petition for writ of *habeas corpus* be and the same is hereby denied.

By the Court:

BENJ. H. BRADLEE, *Deputy Clerk.*

On the first day of May, A. D. 1905, the petitioner comes and claims an appeal from the said order or decree of this Court to the Supreme Court of the United States and gives good and sufficient security that he will prosecute his appeal to effect and answer all damages and costs if he fail to make his plea good.

A true record.

Attest:

ALEX. H. TROWBRIDGE, *Clerk.*

9 *Prayer for Appeal.*

(Filed May 1, 1905.)

From the judgment rendered in the above entitled cause, by which the petition for a writ of *habeas corpus* and a writ of certiorari is dismissed, the petitioner, by his attorney of record, makes application for, and gives notice of, an appeal to the Supreme Court of the United States.

JOHN W. RORKE,
Attorney for Petitioner.

Assignment of Errors.

(Filed Aug. 29, 1905.)

Now comes the petitioner in the above entitled cause and assigns the following grounds of error.

First. The Court erred in refusing to rule that upon all the evidence the writ should issue as prayed for.

Second. The Court erred in ruling that Mariam Zartarian was an alien immigrant.

Third. The Court erred in ruling that trachoma was a loathsome or a dangerous contagious disease.

Fourth. The Court erred in refusing to rule that said Mariam Zartarian was to be considered a citizen of the United States in accordance with 2172 Revised Statutes of the United States.

Fifth. The Court erred in refusing to rule that said Mariam Zartarian was restrained of her liberty without due process of law.

By His Attorney, DANIEL B. RUGGLES.

10 (Copy.)

Bond to Party on Appeal.

(Filed and Approved Sept. 12, 1905.)

Know all men by these presents, That we, Charles Zartarian, of Boston, County of Suffolk and Commonwealth of Massachusetts, as principal, The Ætna Indemnity Company, of Hartford, Conn., a corporation duly established under the laws of the State of Con-

necticut, and having a usual place of business at 84 State Street, Boston, Mass., as surety, are held and firmly bound unto United States of America in the full and just sum of two hundred dollars to be paid to the said United States of America; to which payment well and truly to be made we bind ourselves, our Heirs, Executors, and Administrators, jointly and sevarally, by these Presents.

Sealed with our seals, and dated the eleventh day of September in the year of our Lord one thousand nine hundred and five.

Whereas lately at a Circuit Court of the United States in a suit depending in said Court between Charles Zartarian, Petitioner for *Habeas Corpus v.* George B. Billings, United States Comm'r of Immigration decree was rendered against the said Charles Zartarian, Petitioner and the said Charles Zartarian having obtained an Appeal to remove the said cause to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said George B. Billings citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now the condition of the above obligation is such, that if the said Charles Zartarian shall prosecute his said Appeal to effect, and answer all damages and costs, if he fail to make his plea good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

CHARLES ZARTARIAN, [L. S.]
By His Attorney, DANIEL B. RUGGLES.
THE ÆTNA INDEMNITY COMPANY, [L. S.]
By JAMES R. CHANDLER,
Res. Vice-Pres.

Attest: F. S. HAMLIN,
Res. Ass't Sec'y.

Signed, sealed and delivered in presence of
—— ——.

Sept. 12, 1905.

Approved as of May 2, 1905.
FRANCIS C. LOWELL,
U. S. Circuit Judge.

11 *Citation on Appeal.*

UNITED STATES OF AMERICA, *ss:*

[Seal of the Circuit Court, Massachusetts.]

The President of the United States to George B. Billings, United States Commissioner of Immigration at the Port of Boston, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, Washington, D. C., on the* fourteenth day of October next, pursuant to an Appeal duly obtained

from a decree of the† Circuit Court of the United States for the District of Massachusetts wherein Charles Zartarian, of Boston, in the County of Suffolk and Commonwealth of Massachusetts, Petitioner of Writ of *Habeas Corpus*, is appellant and you are appellee, to show cause, if any there be, why the said decree, entered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Francis C. Lowell, Judge of the Circuit Court of the United States for the District of Massachusetts this fifteenth day of September, in the year of our Lord one thousand nine hundred and five.

FRANCIS C. LOWELL,
U. S. Circuit Judge.

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*Not exceeding 30 days from the day of signing.
†Name of Court in which the Decree is entered.

12 [Endorsed:] No. 1562, Law Docket.

Acknowledgment of Service on Citation on Appeal.

UNITED STATES OF AMERICA, *District of Massachusetts, ss:*

SEPT. 15, 1905.

Due and sufficient service of the within citation is hereby acknowledged in behalf of George B. Billings, United States Commissioner of Immigration at the port of Boston, appellee.

WILLIAM H. GARLAND,
Ass't U. S. Att'y.

13 *Clerk's Certificate.*

UNITED STATES OF AMERICA, *District of Massachusetts, ss:*

I, Alexander H. Trowbridge, Clerk of the Circuit Court of the United States for the District of Massachusetts, within the First Circuit, certify that the foregoing is a true copy of the record in the cause entitled, No. 1562, Law Docket, Charles Zartarian, Petitioner for Writ of *Habeas Corpus*, in said Circuit Court determined, the Prayer for Appeal and Assignment of Errors and Bond to Party on Appeal, and also the original Citation issued in said cause, with the Acknowledgment of Service thereon.

In testimony whereof, I hereunto set my hand and affix the seal of said Circuit Court, at Boston, in said District, this sixteenth day of September, A. D. 1905.

[Seal of the Circuit Court, Massachusetts.]

ALEX. H. TROWBRIDGE, *Clerk.*

Endorsed on cover: File No. 19,914. Massachusetts C. C. U. S. Term No. 120. Charles Zartarian, appellant, *vs.* George B. Billings, United States commissioner of immigration at the port of Boston. Filed September 29th, 1905. File No. 19,914.

FILE COPY.

Office Supreme Court, U. S.
FILED.
NOV 5 1906
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 120.

CHARLES ZARTARIAN, APPELLANT,

vs.

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

BRIEF OF APPELLANT.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 120.

CHARLES ZARTARIAN, APPELLANT,

vs.

GEORGE B. BILLINGS, UNITED STATES COMMISSIONER AT THE PORT OF BOSTON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

BRIEF OF APPELLANT.

STATEMENT OF THE CASE.

This is an appeal by Charles Zartarian from an order of the Circuit Court of the United States for the District of Massachusetts, denying the petition for a writ of *habeas corpus* brought by the petitioner in behalf of his minor daughter, Mariam Zartarian.

The decree was made on the following facts, which were agreed upon by the parties hereto.

"The petitioner, Charles Zartarian, formerly a subject of the Sultan of Turkey, became a naturalized citizen of the United States on September 12, 1896, at the Circuit Court of Cook County, in the state of Illinois. That his daughter Mariam, on whose behalf this petition is brought, is a girl between fifteen and sixteen years of age, and was born just prior to the petitioner's leaving Turkey. That in the latter part of the year 1904 the Turkish government, at the request of the United States minister at Constantinople, granted permission to the petitioner's wife, minor son, and his said daughter, Mariam, to emigrate to the United States, it being stipulated in the passport issued to them that they could never return to Turkey. That on March 22, 1905, the Hon. G. V. L. Meyer, then United States ambassador at Rome, Italy, issued a United States passport to your petitioner's said wife and daughter. (See Transcript of Record, page 3.) That said Mariam arrived at Boston from Naples, Italy, on April 18, 1905, and that on April 18, 1905, she was found

to have trachoma, and was debarred from landing by a board of special inquiry appointed by the United States Commissioner of Immigration for the port of Boston."

(See page 4, Transcript of Record.)

The Court heard no evidence, but denied the petition on the ground that it appeared as a matter of law from the facts set out in the petition and the agreed statement of facts, that Mariam Zartarian was an alien, and therefore not entitled to land.

Thereupon the petitioner assigned the following grounds of error. (See Transcript, page 5.)

First. The Court erred in refusing to rule that upon all the evidence the writ should issue as prayed for.

Second. The Court erred in ruling that Mariam Zartarian was an alien immigrant.

Third. The Court erred in ruling that trachoma was a loathsome or a dangerous contagious disease.

Fourth. The Court erred in refusing to rule that said Mariam Zartarian was to be considered a citizen of the United States in accordance with 2172 Revised Statutes of the United States.

Fifth. The Court erred in refusing to rule that said Mariam Zartarian was restrained of her liberty without due process of law.

Facts and Law Thereon.

The general questions raised under the assignment of error, and the agreed statements of facts are:

First. Was the child Mariam Zartarian an alien within the meaning of the "Act to Regulate the Immigration of Aliens into the United States," approved March 3, 1903? and if so

Second. Does the record show any sufficient ground for her exclusion?

The appellant contends that if the girl was not an alien within the intent and meaning of the Act of March 3, 1903, the commissioner had no authority to detain or deport her, and the final order of the Circuit Court must be reversed.

Gonzales *vs.* Williams, 192 U. S. 1.

Habeas Corpus the Proper Remedy.

This case is to be distinguished from United States *vs.* Sing Tuck, 194 U. S. 161, which held that *habeas corpus* did not lie until after an appeal from the decision of the commissioner had been taken to the Secretary of Commerce and Labor, because by Section 10 of the Act of March 3, 1903, there is no appeal to the Secretary from the decision of a board of special inquiry, based upon the certificate of the examining medical officer.

Hence on the question of law relating to status, *habeas corpus* is the only remedy.

United States *vs.* Wong Kim Ark, 169 U. S. 649.

Citizenship or Alienage a Question of Law.

The question raised above as to citizenship or status is purely one of law, there being no dispute as to the facts. This being so, the case is not governed by the recent decision of United States *vs.* Ju Toy, 198 U. S. 253, for the question passed on in that case by the Secretary of Commerce and Labor was in reality as to the place of birth of the petitioner, a question of fact, and the Court, by a majority opinion, held that the decision of such an executive officer on a question of fact was final. This issue, being, however, one of law, follows

Gonzales *vs.* Williams, *supra.*

It is contended in behalf of the commissioner that the girl, Mariam, does not come within Sect. 2172, Rev. Stats. U. S. (U. S. Comp. Stats., 1901, p. 1334).

This section provides that "the children of persons who have been duly naturalized under any law of the United States, . . . being under the age of twenty-one years at the time of the naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof; and the children of persons who are now, or have been, citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens thereof."

The use of the qualifying phrase "if dwelling in the United States," makes the meaning of this law somewhat uncertain. Is it intended that minors become citizens if they are residing in the United States at the time of the naturalization of the parent? or does it mean that they are to be considered as citizens only while they are residing in the United States?

As bearing on the question, we may note that through the declaration of intention made by a parent, his minor children acquire a certain inchoate status.

U. S. Rev. Stats., § 2168, U. S. Compt. Stats., p. 1332.
See Boyd *vs.* Nebraska, 143 U. S. 177.

And in case of the death of the parent his widow and children "shall be considered as citizens of the United States, and shall be entitled to all the rights and privileges as such, upon taking the oaths prescribed by law."

U. S. Rev. Stats., § 2168.

Congress has also provided for certain cases where an alien has taken up his residence in this country, and has filed his preliminary

declaration to become a citizen, and thereafter sends for his wife and minor children to join him.

See U. S. Comp. Stats., Supp. 1903, p. 185,

where is found this provision:

"Whenever an alien shall have taken up his permanent residence in this country, and shall have filed his preliminary declaration to become a citizen, and thereafter shall send for his wife or minor children to join him, if said wife, or either of said children, shall be found to be affected with any contagious disorder, and if it be proved that said disorder was contracted on board the ship in which they came, and is so certified by the examining surgeon at the port of arrival, such wife or children shall be held, under such regulations as the Secretary of the Treasury shall prescribe, until it shall be determined whether the disorder will be easily curable, or whether they can be permitted to land without danger to other persons; and they shall not be deported until such facts shall have been ascertained."

But this provision refers only to the children of resident aliens, and it is not to be presumed that Congress intended to extend to such persons greater privileges than were given to the children of naturalized citizens.

This Court has decided, however, that a person not a citizen is not necessarily an alien within the meaning of the Act of 1903.

See Gonzales *vs.* Williams, *supra.*

The test may be that of allegiance, and it is respectfully submitted that on the facts of this case Mariam Zartarian had renounced her former allegiance and in good faith had submitted to the allegiance of the United States as far as it was possible to do so.

Regarding the rights acquired by a minor child after the declaration of intention by his parent under U. S. Rev. Stats., 2168, we find the following language in the opinion of Mr. Chief Justice Fuller in Boyd *vs.* Nebraska, 143 U. S. at 178: "Clearly minors acquire an inchoate status by the declaration of intention on the part of their parents. If they attain their majority before the parent completes his naturalization, then they have an election to repudiate the status which they find impressed upon them and determine that they will accept allegiance to some foreign potentate or power rather than hold fast to the citizenship which the act of the parent has initiated for them. Ordinarily this election is determined by application on their own behalf, but it does not follow that an actual equivalent may not be accepted in lieu of a technical compliance."

In the present case we have the minor child of a naturalized citizen, who left her native country, Turkey, accompanied by her mother, with a Turkish passport allowing them to depart from the country, said passport containing the stipulation that they should never return to Turkey, and having been granted by the Turkish govern-

ment at the request of the American minister. (See "Agreed Facts," page 4, Transcript of Record.)

On March 22, 1905, the mother, in behalf of herself and her minor daughter, applied for, and received, a United States passport from the United States ambassador at Rome, Italy. (See "Agreed Facts," Transcript of Record, page 4.)

And to obtain this passport, took the oath of allegiance required by law

See U. S. Comp. Stats., 1901, p. 2765.
Also the rules governing the granting of passports.

It would seem, therefore, that the said Mariam, or her mother in her behalf, had done everything possible to abandon her foreign allegiance in order to assume the rights incident to her father's status as an American citizen, and was within the intent and meaning of Sect. 2174, Rev. Stats.

See also, Boyd *vs.* Nebraska, *supra.*

And having submitted to the allegiance of the United States at the implied invitation of that government, cannot be regarded as an alien, but comes within the opinion of this Court in

Gonzales *vs.* Williams, *supra.*

Moreover, under Rev. Stats., 2172, if the child Mariam had landed and resided in the country a few weeks, or perhaps days, it would appear that she could maintain a claim to be regarded as a citizen by virtue of her father's naturalization.

See Ruling of Department of State, Foreign Relations, 1881, p. 53; also 1885, pp. 395–6.

And it is submitted that if she should become a public charge, under Sect. 20 of the Act of March 3, 1903, within two years of her landing, she could not then be deported as provided by said section.

The case of United States *vs.* Williams, 132 Federal Reporter, 894, was cited in the Circuit Court as decisive of the present case, but in that case the father did not take out his final papers until the attempted landing of the children, and their detention at Ellis Island.

Sufficiency of Record.

Upon the second question raised, the petitioner contends that as there was no evidence introduced in the Circuit Court, the case having been decided on the petition and the agreed statements of facts, it not appearing of record that "trachoma," so-called, is either a "loathsome or a dangerous contagious disease," since this did not affirmatively appear by the agreed statement, the judge of the

Circuit Court erred in ruling as a matter of law that such was the fact.

Mayhew *vs.* Durfee, 138 Mass. 584.
And see also, Schwartz *vs.* Boston, 151 Mass. 226,

in which case Mr. Justice Holmes, giving the opinion of the Court, says: "This case having been submitted upon an agreed statement of facts, and no power to draw inferences of fact having been given in express terms, the Superior Court was confined to ruling upon the effect of the facts stated as matter of law. The question here is whether the ruling was right, not whether there was any evidence warranting a finding."

Neither can the inference now be drawn by this Court that the child was excluded as having a loathsome or dangerous contagious disease.

Gallagher *vs.* Hathaway Mfg. Co., 169 Mass. 578.
Miller *vs.* Horton, 152 Mass. 540, 548.

Respectfully submitted,

DANIEL B. RUGGLES,

Attorney for Petitioner

FILE COPY.

Office Supreme Court, U. S.
FILED.
NOV 14 1906
JAMES H. McKENNEY,
CLERK

No. 120.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

CHARLES ZARTARIAN, APPELLANT,
v.
GEORGE B. BILLINGS, UNITED STATES COMMISSIONER OF IMMIGRATION AT THE PORT OF BOSTON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

CHARLES ZARTARIAN, APPELLANT,
v.
GEORGE B. BILLINGS, UNITED STATES Commissioner of Immigration at the Port of Boston. } No. 120.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This is an appeal from a decree of the Circuit Court of the United States for the First Circuit denying the petition of appellant for a writ of habeas corpus to secure the release of his daughter Mariam, then as now lawfully in the custody of the immigration officials at Boston, having been denied admission to this country on the ground that she is an alien afflicted with trachoma, a dangerous contagious disease.

The agreed facts as shown by the record (p. 4) are as follows:

> The petitioner, Charles Zartarian, formerly a subject of the Sultan of Turkey,

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became a naturalized citizen of the United States on September 12, 1896, at the Circuit Court of Cook County, in the State of Illinois. That his daughter Mariam, on whose behalf the petition is brought, is a girl between fifteen and sixteen years of age, and was born just prior to the petitioner's leaving Turkey. That in the latter part of the year 1904 the Turkish Government at the request of the United States minister at Constantinople, granted permission to the petitioner's wife, minor son, and his said daughter Mariam, to emigrate to the United States, it being stipulated in the passport issued to them that they could never return to Turkey. That on March 22, 1905, the Hon. G. V. L. Meyer, then United States ambassador at Rome, Italy, issued a United States passport to your petitioner's said wife and daughter. That said Mariam arrived at Boston from Naples, Italy, on April 18, 1905, and that on April 18, 1905, she was found to have trachoma, and was debarred from landing by a board of special inquiry appointed by the United States Commissioner of Immigration for the port of Boston.

ARGUMENT.

The first three assignments of error (R., 5) are past without discussion, as they appear trivial and unimportant. The fourth allegation of error appears determinative of the whole case, and charges that "the court erred in refusing to rule that said

Mariam Zartarian was to be considered a citizen of the United States in accordance with section 2172, Revised Statutes of the United States."

Thus it will be noticed that if the section mentioned, as contended by counsel for appellant, confers citizenship upon the said Mariam Zartarian, then the immigration laws can not be invoked against her admission to this country. On the other hand, however, if section 2172 does not so operate, then the immigration laws are applicable, and the fifth assignment of error charging that she is deprived of her liberty "without due process of law," is necessarily eliminated.

Section 2172 reads as follows:

> The children of persons who have been duly naturalized under any law of the United States, or who, previous to the passing of any law on the subject, by the Government of the United States, may have become citizens of any one of the States, under the laws thereof, being under the age of twenty-one years at the time of the naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof; and the children of persons who now are, or have been, citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens thereof; but no person heretofore proscribed by any State, or who has been legally convicted of having joined the army of Great Britain during the Revolutionary war, shall be

> admitted to become a citizen without the consent of the legislature of the State in which such person was proscribed.

In the case of *United States* v. *Wong Kim Ark* (169 U. S., 649–702) this court emphatically declared that—

> A person born out of the jurisdiction of the United States can only become a citizen by being naturalized, either by treaty, as in the case of the annexation of foreign territory, or by authority of Congress, exercised either by declaring certain classes of persons to be citizens, as in the enactments conferring citizenship upon foreign-born children of citizens, or by enabling foreigners individually to become citizens by proceedings in the judicial tribunals, as in the ordinary provisions of the naturalization acts.

Confronted by this concise statement of the manner in which persons born out of the jurisdiction of the United States may become citizens, appellant, by his counsel, has singled out section 2172, asserting in effect that under its provisions the naturalization of the father operated *eo instanti* to confer citizenship upon his minor child then residing in Turkey, and at all times since.

It requires no careful analysis of section 2172 to disclose that its purpose is to confer citizenship upon two classes of children only, viz, (1) upon the minor children of naturalized parents, if such children be dwelling in this country; and (2) upon

the children born to citizens while such citizens are sojourning abroad.

This section was before the Circuit Court in the case of *United States* v. *Kellar* (13 Fed., 82–84), and Mr. Justice Harlan had this to say concerning its scope:

> It is quite certain that the reproduction in section 2172 of the revision of the statutes of the principle embodied in the act of 1802 was for the purpose of declaring as the established policy of the Government that the children of persons who have been duly naturalized under any law of the United States, *being under the age of twenty-one years at the time of the naturalization of their parents, shall, if dwelling in the United States*, be considered as citizens thereof.

In the case of *Behrensmeyer* v. *Kreitz* (135 Ill., 591–629), the court said, in referring to section 2172:

> * * * in other words, in order that the naturalization of the parent should be effective to invest his child with citizenship, two conditions must exist at the time of such naturalization—the child must be under twenty-one years of age, and must also dwell in the United States.

To the same effect are:

> *O'Connor* v. *State*, 9 Fla., 215–234;
> *State* v. *Penney*, 10 Ark., 621–630;
> *Gumm* v. *Hubbard*, 97 Mo., 311–320.

The construction thus placed upon the statute was adhered to in the case of *Abdoo* v. *Williams* (132 Fed., 894–895), the facts in which are similar to those in the case under consideration.

The court, in dismissing the writ, said:

> The naturalization of the father did not change the status of the children. They were born out of the limits and jurisdiction of the United States, their father at the time of their respective births not being a citizen thereof. * * * Therefore these children were not "dwelling in the United States" when their father was naturalized, and his act did not require the authorities to consider them as citizens. Being aliens and indisputably immigrants, the provisions of the exclusion acts apply.

In conclusion, it is submitted that the appellant's child, Mariam, altho under the age of 21 years at the time of the naturalization of the father, was not then and is not now dwelling in the United States. Her status, therefore, is that of an alien.

The Government respectfully asks that the decree of the Circuit Court be affirmed.

ALFORD W. COOLEY,
Assistant-Attorney General.

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No. 120.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

CHARLES ZARTARIAN, APPELLANT,
v.
GEORGE B. BILLINGS, UNITED STATES COMMISSIONER OF IMMIGRATION AT THE PORT OF BOSTON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

SUPPLEMENTAL BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

CHARLES ZARTARIAN, APPELLANT,
v.
GEORGE B. BILLINGS, UNITED STATES Commissioner of Immigration at the port of Boston. } No. 120.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

SUPPLEMENTAL BRIEF FOR THE UNITED STATES.

If the meaning of section 2172, Revised Statutes, were doubtful, its practical construction by the State Department, which is so frequently called upon to decide questions of citizenship, would be entitled to great weight. (See *United States* v. *Alger*, 152 U. S., 384, 397; *Swift* v. *United States*, 105 U. S., 691, 695; *United States* v. *Graham*, 110 U. S., 219; and *United States* v. *Tanner*, 147 U. S., 661.)

To rule that the girl Mariam is a citizen of the United States, would upset the established practise of the State Department for sixty years. See Moore's International Law Digest, vol. 3, p. 464,

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sec. 413, and p. 487 and authorities there cited; also letter of Mr. Evarts, Secretary of State to Mr. Caldwell, March 6, 1880 (MSS. Dom. Let.), which reads as follows:

(Copy.)

DEPARTMENT OF STATE,
Washington, 6 March, 1880.

G. W. CALDWELL, Esq.,
Wellsburg, Brooke Co., West Virginia.

SIR: I have received your letter of the 3d instant written on behalf of Mr. C. Smeidel, and presenting the question of the status of his minor son.

It appears from your statement that Mr. Smeidel, a native of Prussia, came to the United States in 1874, settled in West Virginia, and is now a naturalized citizen of the United States; that he left behind him a minor son, who has always resided in Prussia, and has now attained the age of 18 years; that Mr. Smeidel has recently sent to his son a draft to defray his expenses to this country, whither he wishes him to come; and that on the son's attempting to leave Prussia the authorities there prevented his departure on the ground that he is liable to military service, "although not as yet drafted." In view of these facts, Mr. Smeidel asks if, by any law or treaty, the son can be demanded of the Prussian Government.

In reply, I have to inform you that neither law or treaty covers the case of young Smeidel.

> Section 2172 of the Revised Statutes provides that children under the age of 21 years at the time of the naturalization of their parents "shall, *if dwelling in the United States*, be considered as citizens thereof." Mr. Smeidel's son is not dwelling within the jurisdiction of the United States, and has never been outside of the jurisdiction of the country of his nativity. He has, it would seem, attained the age when every Prussian, under the laws of Prussia, becomes liable to military duty, and the fact of the naturalization of the father in a foreign country does not exempt the son, a native Prussian, from the operation of those laws, he being in Prussian jurisdiction.
>
> On the facts as stated there is, therefore, no ground for the intervention of this Government in young Smeidel's behalf.
>
> I am, sir, your obedient servant,
>
> WM. M. EVARTS.

Another case in point is that of Anton Macek, who was born in Vienna, of Austrian parents, August 13, 1875:

> In May, 1884, his father emigrated to the United States with his entire family and had resided in Chicago ever since. Before his naturalization and while the son Anton was yet a minor, August 16, 1894, his father sent him to Austria to be educated. The father was naturalized in Chicago, October 22, 1894, that is, subsequent to the return of the son Anton to Austria, where he had since remained. Upon application for a passport it

was held that Anton Macek was not entitled to claim citizenship in the United States for the reason that "he was not dwelling in the United States at the time of his father's naturalization, he has not at any time since dwelt in the United States, and of course is not now dwelling here." (Van Dyne on Citizenship, p. 115.)

ALFORD W. COOLEY,
Assistant Attorney-General.

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Supreme Court of the United States.

No. 120.—October Term, 1906.

Charles Zartarian, Appellant, vs. George B. Billings, United States Commissioner of Immigration at the Port of Boston.	Appeal from the Circuit Court of the United States for the District of Massachusetts.

[January 7, 1907.]

Mr. Justice Day delivered the opinion of the Court.

This is an appeal from an order of the Circuit Court of the United States for the District of Massachusetts, denying a petition for a writ of *habeas corpus* filed by Charles Zartarian in behalf of Mariam Zartarian, his daughter, who, it was alleged, was unlawfully imprisoned, detained and restrained of her liberty at Boston by the United States Commissioner of Immigration, which imprisonment was alleged to have been in violation of the constitutional rights of the said Mariam Zartarian, without due process of law and contrary to the provisions of section 2172 of the Revised Statutes of the United States, which section, it is alleged, made said Mariam a citizen of the United States by virtue of the citizenship of her father, the petitioner.

The United States District Attorney and the attorney for the petitioner stipulated the following facts:

"The petitioner, Charles Zartarian, formerly a subject of the Sultan of Turkey, became a naturalized citizen of the United States on September 12, 1896, at the Circuit Court of Cook County in the State of Illinois. That his daughter Mariam, on whose behalf this petition is brought, is a girl between fifteen and sixteen years of age, and was born just prior to the petitioner leaving Turkey. That in the latter part of the year 1904 the Turkish Government, at the request of the United States minister at Constantinople, granted permission to the petitioner's wife, minor son, and his said daughter, Mariam, to emigrate to the United States, it being stipulated in the passport issued to them that they could never return to Turkey. That on March 22, 1905, the Hon. G. V. L. Meyer, then United States Ambassador at Rome, Italy, issued a United States passport to your petitioner's said wife and daughter. That said Mariam arrived at Boston from Naples, Italy, on April 18, 1905, and that on April 18, 1905, she was found to have trachoma, and was debarred from landing by a board of special inquiry appointed by the United States Commissioner of Immigration for the port of Boston."

The petitioner's child, Mariam Zartarian, was debarred from landing at the port of Boston under the provisions of the Act of March 3, 1903, chap. 1012, 32 Stat. 1213, U. S. Com. Stat. 1901, Supp. of 1903, p. 170,

entitled "An act to regulate the immigration of aliens into the United States."

Section 2 of that act, among other things, provides that certain classes of aliens shall be excluded from admission to the United States, including "persons afflicted with a loathsome or with a dangerous contagious disease." Upon the finding of the board of inquiry that said Mariam had trachoma, she was debarred from landing.

The contention is that she does not come within the terms of this statute, not being an alien, but entitled to be considered a citizen of the United States, under the provisions of sections 2172 of the Revised Statutes, which provides: "The children of persons who have been duly naturalized under any law of the United States . . . being under the age of twenty-one years at the time of naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof."

As Mariam was born abroad, a native of Turkey, she has not become a citizen of the United States, except upon compliance with the terms of the act of Congress, for, wanting native birth, she can not otherwise become a citizen of the United States. Her right to citizenship, if any she has, is the creation of Congress, exercising the power over this subject conferred by the Constitution. (*United States* v. *Wong Kim Ark*, 169 U. S. 649, 702.)

The relevant section, 2172, which it is maintained confers the right of citizenship, is the culmination of a number of acts on the subject passed by Congress from the earliest period of the Government. Their history will be found in vol. 3, Moore's International Law Digest, p. 467.

The act of 1872 is practically the same as the act of April 14, 1802, (2 Stat. 153,) which provided:

"The children of persons duly naturalized under any of the laws of the United States . . . being under the age of 21 years at the time of their parents being so naturalized . . . shall, if dwelling in the United States, be considered as citizens of the United States, and the children of persons who are now or have been citizens of the United States shall, though born out of the limits and jurisdiction of the United States, be considered citizens of the United States."

In *Campbell* v. *Gordon*, (6 Cranch, 176,) it was held that this act conferred citizenship upon the daughter of an alien naturalized under the act of January 29, 1795, she being in this country at the time of the passage of the act of April 14, 1802, and then "dwelling in the United States."

The act has also been held to be prospective in its operation and to include children of aliens naturalized after its passage, when "dwelling in the United States." (*Boyd* v. *Thayer*, 143 U. S. 135, 177.)

The construction of this law and the meaning of the phrase "dwelling in the United States" has been the subject of much consideration in the executive department of the Government having to do with the admis-

sion of foreigners and the rights of alleged naturalized citizens of the United States. The rulings of the State Department are collected in Prof. Moore's Digest of International Law, vol. 3, p. 467 *et seq.*

The department seems to have followed a rule established at an early period, and formulated with fullness in Foreign Relations for 1890, p. 301, in an instruction from Mr. Blaine to Minister Phelps, at Berlin, in which it was laid down that the naturalization of the father operates to confer the municipal right of citizenship upon the minor child if, at the time of the father's naturalization, dwelling within the jurisdiction of the United States, or if he come within that jurisdiction subsequent to the father's naturalization and during his own minority.

Whether, in the latter case, a child not within the jurisdiction of the United States at the time of the parents' naturalization, but coming therein during minority, acquires citizenship is not a question now before us.

The limitation to children "dwelling in the United States" was doubtless inserted in recognition of the principle that citizenship can not be conferred by the United States on the citizens of another country when under such foreign jurisdiction; and is also in deference to the right of independent sovereignties to fix the allegiance of those born within their dominions, having regard to the principle of the common law which permits a sovereignty to claim, with certain exceptions, the citizenship of those born within its territory.

It is pointed out by Mr. Justice Gray, delivering the opinion in *United States* v. *Wong Kim Ark*, (169 U. S. 649, 686,) that the naturalization acts of the United States have been careful to limit admission to citizenship to those "within the limits and under the jurisdiction of the United States."

The right of aliens to acquire citizenship is purely statutory; and the petitioner's child having been born and remained abroad, clearly does not come within the terms of the statute. She was debarred from entering the United States by the action of the authorized officials, and, never having legally landed, of course could not have dwelt within the United States. (*Nishimura Ekiu* v. *United States*, 142 U. S. 651.)

It is urged that this seems a harsh application of the law, but if the terms of the statute are to be extended to include children of a naturalized citizen who have never dwelt in the United States, such action must come from legislation of Congress and not judicial decision. Congress has made provision concerning an alien's wife or minor child suffering from contagious disease, when such alien has made a declaration of his intention to become a citizen, and when such disease was contracted on board the ship in which they came, holding them under regulations of the Secretary of the Treasury until it shall be determined whether the disorder will be easily

curable, or whether such wife or child can be permitted to land without danger to other persons, requiring that they shall not be deported until such facts are ascertained, (37 Stat. 1221, U. S. Comp. Stat. 1901, Supp. of 1903, p. 185). But Congress has not said that an alien child who has never dwelt in the United States, coming to join a naturalized parent, may land when afflicted with a dangerous contagious disease.

As this subject is entirely within Congressional control, the matter must rest there; it is only for the courts to apply the law as they find it.

It is suggested that the agreed finding of facts contains no stipulation as to the dangerous or contagious quality of trachoma, but the petition shows that the petitioner's daughter was debarrrd from landing because it was found that she had a dangerous contagious disease, to wit, trachoma. Furthermore, the statute makes the finding of the board of inquiry final, so far as review by the courts is concerned, the only appeal being to certain officers of the department. (32 Stat. 1213; *Nishimura Ekiu* v. *United States*, 142 U. S. 651.)

Finding no error in the order of the Circuit Court, it is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.